

SENATE BILL 2762
By Burks

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 11, and to enact the "Uniform Bail Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 11, Parts 1 and 2, are amended by deleting such parts in their entirety and by substituting instead the following Sections 2 through 40:

SECTION 2. This act may be cited as the Uniform Bail Act.

SECTION 3. As used in this act:

(a) "Person" means an individual or corporation.

(b) "Bail" means the security or agreement given by an accused to secure his/her pretrial release from custody and to guarantee the accused will appear before the proper court at all times required and answer the accusation brought against him or her.

(c) "Appearance bond" means a written undertaking by the accused in which he or she posts bail.

(d) "Commercial bond" means an appearance bond entered into by the accused as principal and his surety or sureties as security for appearance.

(e) "Cash bond" means an appearance bond upon the execution of which, as security, the accused deposits cash in the amount of the bond with the custodian of the funds of the court in which the prosecution is pending.

(f) "Cash" means current money of the United States and does not include credit or other evidence of money or documents that depend upon the financial responsibility of any person or entity other than the United States.

(g) "Personal bond" means an appearance bond executed by an accused without security other than his or her written agreement to be bound thereby.

(h) "Commercial surety" means a person who obtains financial consideration for and is lawfully licensed, or otherwise authorized by law in the jurisdiction where bond is to be posted, to be a surety or co-surety on a commercial bond.

(i) "Evidence" means credible evidence, but such evidence need not conform to the rules of evidence applicable to trials of cases unless otherwise stated or required by the context in which it is used.

(j) "Disposition of the case" means a dismissal or acquittal of, or finding of guilty on, the charges against the accused and does not include the period between a finding of guilty and sentence thereon or appeal thereof or incarceration of the accused.

(k) "Peace officer" means a duly constituted officer of the law under the laws of the jurisdiction which he serves.

(l) "Court" means a court of law duly constituted and existing under the constitution and laws of the state or the United States.

(m) "Judicial officer" means a duly elected or appointed person who presides over a court, and sometimes is used synonymously with the term "court".

SECTION 4. There shall be no bail to secure the pretrial release of an accused other than commercial, cash, or personal bonds.

SECTION 5. Release on bail. Upon the appearance before a judicial officer of a person charged with an offense, unless the judicial officer is convinced by the evidence that no form of bail will reasonably ensure the appearance of the accused as required or the physical safety of any person or community, the judicial officer shall order that the accused, pending trial, be:

(a) released on a commercial bond in accordance with the provisions of Section 12;

(b) released on a cash bond in accordance with the provisions of Section 21; or

(c) released on a personal bond in accordance with the provisions of Section 25.

SECTION 6. Attendance at bail setting. Notwithstanding the other provisions of this act, the presence of the accused is not necessary when bail is initially set by a judicial officer and, provided a warrant of arrest has been issued, the accused need not be in custody when bail is set.

SECTION 7. Amount of bond. The judicial officer shall set bond in an amount reasonably sufficient to ensure the appearance of the accused; however, no financial condition may be imposed which, in and of itself, results in the pretrial detention of the accused.

SECTION 8. Preset bond amounts. In jurisdictions where it is impractical or undesirable to bring an accused before a judicial officer within two (2) hours after arrest, the judicial officers of the jurisdiction may set predetermined commercial bond amounts for specified offenses for pretrial release of an accused. The form of bail and amount of bond shall be reviewed on motion by the state or accused by the judicial officer before whom the accused first appears after arrest and may be, after hearing, changed, modified, or revoked by such official. Nothing herein shall prohibit the judicial officers of a jurisdiction or the state from predetermining that no bail shall be permitted for certain specified offenses until the accused appears for hearing before a judicial officer.

SECTION 9. Conditions for release. In addition to the form of appearance bond, the judicial officer may impose any other conditions of release that the official shall determine to be reasonably necessary to ensure the physical safety of any other person or the community and the appearance of the accused as required.

SECTION 10. Release of accused. The law enforcement agency having custody of the accused or the right to custody, if the accused is not then in custody, at the time bail is posted shall forthwith release the accused from custody, provided that such bail conforms with the orders of the judicial officer and the provisions of this act.

SECTION 11. Review of bail. At any time prior to trial, the court, upon motion of the state or accused, may review the prior order granting or denying bail or setting the conditions of release and, after hearing, revoke, change, or modify such prior order or refuse to do so.

SECTION 12. Appeal. Orders of a court granting or denying bail or setting conditions of release and orders revoking, changing, or modifying prior orders or refusing to do so may be appealed in accordance with the provisions of the applicable rules of appellate procedure.

SECTION 13. Commercial bond. Commercial bonds shall be signed by the accused or by one (1) or more sureties at least one (1) of which shall be a commercial surety and shall contain the following requisites:

(a) that it is payable to the state;

(b) that the accused and his sureties bind themselves that the accused will appear before the proper court or judicial officer to answer the accusation against the accused;

(c) the general nature of the charges against the accused;

(d) that the name and address of the accused and sureties be shown on the bond together with sufficient information to identify the accused as the person charged with the offense shown on the bond;

(e) that the bond show the time and place the accused is bound to appear and the court or judicial officer before which the accused is to appear. The bond shall also bind the accused to appear before any court or judicial officer to which the case may thereafter be transferred or be pending at any time, and place where the presence of the accused may be required under this act or by any court or judicial officer;

(f) that the bond be conditioned that the accused and sureties shall pay all necessary and reasonable expenses incurred by any and all peace officers in rearresting the accused who fails to appear before the court or judicial officer as required in the bond. The amount of such expenses shall be included in the principal amount specified in the bond, and in no event shall the accused or a surety be required to pay more than the principal amount of the bond. The failure of a bond to contain the conditions specified in this paragraph shall not affect the legality of the bond but it is intended that

any peace officer shall look to the accused and his sureties for expenses incurred in rearresting the accused and not to the state.

SECTION 14. Cash bond in lieu of commercial bond. When an accused is ordered released on a commercial bond, the accused may in lieu thereof post a cash bond in the same amount in accordance with the provisions of Section 21 of this act.

SECTION 15. Revocation of commercial bond. Commercial bonds may be revoked only in accordance with the provisions of Section 29 and forfeited only in accordance with the provisions of Section 31 of this act.

SECTION 16. Surrender of accused. Any surety on a commercial bond may surrender the accused only in the following manner:

- (a) Notice shall first be given to all sureties on the bond of a surety's intention to surrender the accused.

- (b) The surety shall file an Affidavit of Surrender with the judicial officer before whom the charges are pending.

- (c) Such affidavit shall state:

- (1) the court and case number;

- (2) the name of the accused;

- (3) the offense with which the accused is charged;

- (4) the date of the bond; and

- (5) reasons for the surrender of the accused.

SECTION 17. Issuance of an arrest warrant. If the judicial officer finds from the evidence that there is just cause for surrender of the accused, such judicial officer shall cause a warrant for arrest of the accused to be issued to the peace officer of the jurisdiction and the surety.

SECTION 18. Execution of arrest warrant. Such arrest warrant may be executed by a peace officer or a commercial surety or his duly appointed agent or a duly licensed security officer or private investigator duly licensed in the state.

SECTION 19. Unissued warrant. It is an affirmative defense to any liability of the sureties on the bond if the judicial officer refuses to issue a warrant for the arrest of the accused and, thereafter, the accused fails to appear as directed.

SECTION 20. Length of liability. Liability of the sureties on the bond shall continue after the surrender unless or until liability is relieved under the provisions of Section 20.

SECTION 21. Before forfeiture the sureties on a bond may be relieved of liability thereon only upon the occurrence of any of the following events:

- (a) the return of the accused to custody after surrender;
- (b) verification by the peace officer of the jurisdiction that the accused is in foreign or federal custody or the custody of any other state or jurisdiction within the state;
- (c) revocation of the bond in accordance with the provisions of Section 29 of this act;
- (d) death of the accused;
- (e) insanity or life-threatening illness of the accused which prevents his appearance, when verified by the affidavit of a licensed physician or other evidence and accepted by the judicial officer before whom the case is pending as justification for nonappearance;
- (f) judgment of a court of competent jurisdiction;
- (g) disposition of the case.

SECTION 22. Cash bonds. A cash bond shall be signed by the accused and cash in the amount of the bond deposited by the accused, or someone on behalf of the accused, with the custodian of the funds of the court in which the prosecution is pending, and the bond shall contain the same requisites as a commercial bond except that no sureties shall be required.

SECTION 23. Commercial bond in lieu of cash bond. When the accused is ordered released on a cash bond, the accused may, in lieu thereof, post a commercial bond in the same amount in accordance with the provisions of Section 12 of this act.

SECTION 24. Revocation of cash bonds. Cash bonds may be revoked only in accordance with the provisions of Section 29 and forfeited only in accordance with the provisions of Section 31 of this act.

SECTION 25. Refund of cash deposit. Upon disposition of the case the cash deposit shall be refunded only to the accused provided that such cash deposit may be assigned in writing, prior to refund, by the accused to any other person and such refund shall be made only to the assignee and the accused.

SECTION 26. Personal bonds. Personal bonds shall be signed by the accused without sureties or other security and shall contain the same requisites as a commercial bond except as to sureties and the following:

- (a) drivers license and state of issuance, if any, and the social security number, if any, of the accused;

- (b) nearest relative's name and address, if any, of the accused; and

- (c) the following oath sworn and signed by the accused: "I swear that I will appear before (cite court or judicial officer) at (cite address, city, county) of the state on the (cite date) at the hour of (cite time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (cite amount) including all necessary and reasonable expenses incurred in any arrest for failure to appear".

SECTION 27. Restrictions on personal bonds. An accused shall not be released on a personal bond if:

- (a) less than twenty-four (24) hours have elapsed since the accused has been placed in custody;

- (b) a prior bond has been revoked and the accused has not appeared before a judicial officer and proved to the satisfaction of the judicial officer that the accused is entitled to a personal bond.

- (c) the accused has on a prior occasion willfully failed to appear or otherwise violated the conditions of release of an appearance bond and the accused has not

appeared before a judicial officer and proved to the satisfaction of the judicial officer that the accused is entitled to a personal bond;

(d) the accused has been convicted of a prior criminal offense other than a minor traffic offense.

SECTION 28. Revocation of personal bonds. Personal bonds may be revoked only in accordance with the provisions of Section 29 of this act.

SECTION 29. Forfeiture of personal bonds. The personal bond of an accused who without sufficient excuse willfully fails to appear shall be immediately declared forfeited in accordance with the provisions of Section 31 of this act.

SECTION 30. Revocation of bail. Prior to forfeiture, the appearance bond of an accused may be revoked by the court or judicial officer before which the case is pending and the accused ordered rearrested and returned to custody upon the occurrence of any of the following:

(a) The court or judicial officer determines there is a reasonable probability that the accused will not appear as required or will cause physical harm to another person or the community.

(b) The accused violates any condition of release other than failure to appear.

(c) The accused is charged with another criminal offense while released on bail other than a minor traffic violation.

SECTION 31. Bond rate for violators. After revocation of bail and return of the accused to custody, unless the court or judicial officer before which the case is pending determines that the accused will not appear as required or will violate any condition of release or will be a physical danger to another person or the community, such judicial officer shall order the accused released pending trial in accordance with the provisions of Section 4, provided that any bond shall be a commercial or cash bond for at least twice the amount of the revoked bond but not less than two thousand dollars (\$2,000).

SECTION 32. Forfeiture of appearance bond. The appearance bond of the accused shall be declared forfeited only if, without sufficient excuse, the accused fails to appear at any time during the proceedings as required through the disposition of the case.

SECTION 33. Rules for forfeiture. Upon declaration of forfeiture, the clerk of the court or judicial officer shall, promptly upon entering the fact of such failure to appear in the minutes, mail notice by certified mail of the forfeiture to the accused and all sureties, if any, at their respective addresses, or the depositor or any assignee of any cash deposit. If the clerk fails to mail such notice within ten (10) days after such entry in the minutes, the surety or depositor assignee of any cash deposit shall be released from all obligations under the bond.

SECTION 34. Conditions for forfeiture. Within one hundred eighty (180) days after such mailing of the clerk's notice of forfeiture, the court shall, under terms as may be just and equal to all forms of bail, order the forfeiture of the bond or deposit vacated upon the occurrence of any of the following:

- (a) surrender by a surety of the accused to the court or to custody of a peace officer;

- (b) the accused and his sureties, if any, appear and satisfactorily excuse the accused's failure to appear or show to the satisfaction of the court that such failure was not with the connivance of a surety;

- (c) the court determines from the evidence that the accused is dead or otherwise permanently unable to appear in court due to life-threatening illness, insanity, or detention by civil or military authority in the United States or any foreign jurisdiction and the absence of the accused was not with connivance of a surety;

- (d) any event that would have resulted in discharge of the sureties before forfeiture under the provisions of Section 20 of this act.

SECTION 35. Notification of forfeiture. Upon the expiration of such one hundred eighty (180) day period, if the forfeiture has not been vacated as provided in Section 33 of this act, the court shall on motion and notice enter judgment of forfeiture against the accused and sureties, if

any, and execution may issue thereon. The clerk shall mail such notice by certified mail at least twenty-one (21) days before entry of judgment of forfeiture to the addresses of the accused and all sureties appearing on the face of the bond.

SECTION 36. Within eighteen (18) months after entry of judgment of forfeiture in accordance with the provisions of Section 34 of this act, if it be made to appear to satisfaction of the court that a surety on the bond was instrumental in returning the fugitive accused to court or into the custody of a peace officer, the court shall remit the amount of the judgment or any part thereof as the court shall deem fair and just under all the circumstances.

SECTION 37. An accused may be released on bond before trial under the same appearance bond and conditions as were imposed prior to trial unless the court determines that other conditions or termination of bail are reasonably necessary to ensure the accused's presence during the trial or ensure that the conduct of the accused will not obstruct the orderly and expeditious progress of the trial.

SECTION 38. In any event, upon disposition of the case, whether or not the appearance bond has been revoked or liability discharged prior to that time, bail is terminated and a liability discharged on the bond unless the accused is ordered released from custody on bail as provided in Section 38 of this act, provided that the accused shall not be released on the same pre-trial appearance bond without the written approval of the accused and the sureties, if any, after disposition of the case.

SECTION 39. Eligibility for release on bail after disposition of the case, whether pending sentence or notice of appeal or appeal of the case or incarceration of the accused, shall be determined by the court in accordance with the provisions of this act, provided that the burden of establishing that the accused will abide by the orders of the court to appear at all times as directed and will not pose a physical danger to any other person or the community shall rest with the accused.

SECTION 40. General provisions.

(a) All proceedings held in connection with the provisions of this act shall be in accordance with the rules of criminal procedure or the rules governing appeals of criminal cases where applicable, otherwise in accordance with the rules of civil procedure or the rules governing appeals from civil cases.

(b) In the event of conflict between a provision of this act and other provisions thereof or between the provisions of this act and any other act of this state, any such conflict shall be construed or resolved to facilitate and effectuate the declaration of policy of this act as set forth in Section 1.

SECTION 41. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 42. This act shall take effect July 1, 1996, the public welfare requiring it.